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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,787	11/20/2000	Joseph Quinn Chapman	061606-1241	9842

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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP  
100 GALLERIA PARKWAY, NW  
STE 1750  
ATLANTA, GA 30339-5948

EXAMINER

TORRES, JOSEPH D

ART UNIT PAPER NUMBER

2133

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/716,787

Applicant(s)

CHAPMAN, JOSEPH QUINN

Examiner

Joseph D. Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 70-74 and 80-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 70-74 and 80-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 70-74 and 80-83 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 70-72, 74 and 80-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Pregont; Gary J. et al. (US 5351245 A, hereafter referred to as Pregont).

35 U.S.C. 102(b) rejection of claim 70.

Pregont teaches a receiver for developing a received signal (Transceiver 101 in Figure 1 of Pregont is communication device comprising a Receiver 111); and a digital signal processor (Transceiver 101 in Figure 1 of Pregont is communication device comprising a DSP 115; Note col. 2, lines 30-32 of Pregont teach that the processing system is substantially a DSP since it is comprised of a DSP), where said DSP comprises: layer one logic configured to perform OSI layer one processing (col. 3, lines 11-13 in Pregont teaches that RCH frames are comprised of layer one control bits; col. 4, lines 23-42 in

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Pregont teach that DSP 115 is digital logic for encoding and processing RCH frame data; hence DSP 115 is comprised of layer one logic configured to perform OSI layer one processing); and frame check sequence logic configured to compute a frame check sequence (FCS) on each frame of said received signal, wherein the layer one logic has access to said frame check sequence (CRC 321 is substantially a frame check sequence for checking the integrity of the RCH frames).

35 U.S.C. 102(b) rejection of claims 71, 72 and 74.

Pregont teaches a means for saving at least one parameter of an adaptive device located within said receiver, and calculated by said DSP, if said frame check sequence indicates that said received signal is error free (col. 3, lines 5-8 in Pregont teach that an RCH frame contains one of the following three messages: a transmission power control message, a time alignment message, or a downlink power setting message; a transmission power control message, a time alignment message, or a downlink power setting message are all parameters for an adaptive device; hence an RCH frame is a transmission power control message, a time alignment message, or a downlink power setting message).

35 U.S.C. 102(b) rejection of claims 80-83.

Claims 80-83 are intended use claims and do not result in any structural change to claim 70. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

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patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pregont; Gary J. et al. (US 5351245 A, hereafter referred to as Pregont) in view of Martin; Gary D. (US 4361892 A).

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35 U.S.C. 103(a) rejection of claim 73.

Pregont substantially teaches the claimed invention described in claims 70-72 (as rejected above).

However Pregont does not explicitly teach the specific use of an adaptive device such as an equalizer.

Martin, in an analogous art, teaches use of an adaptive equalizer for a receiver capable of adapting equalization based on error rate.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pregont with the teachings of Martin by including use of an adaptive equalizer for a receiver capable of adapting equalization based on error rate. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that use of an adaptive equalizer for a receiver capable of adapting equalization based on error rate would have provided delay equalization in the case of non-minimum phase fades (see Abstract in Pregont).

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOSEPH TORRES  
PRIMARY EXAMINER

Joseph D. Torres, PhD  
Primary Examiner  
Art Unit 2133